THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25517 of 2006

Dated: 08.02.2007

Between:

The Ashoorkhana Hazarath Abbas, a wakf institution, Kurnool.
..... PETITIONER

AND

The Director of Mines & Geology, Hyderabad, and others.
.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.25517 of 2006

ORDER:

Ashoorkhana Hazarath Abbas, a registered Wakf

represented by its mutawalli, assails the impugned orders of first respondent dated 02.11.2006, whereunder in purported exercise of powers under Rule 35 of the Andhra Pradesh Minor Mineral Concession Rules, 1966, first respondent set aside the orders of the Deputy Director of Mines and Geology, Kurnool, dated 27.07.2006 and restored the leases in favour of respondents 5 and 6 and further directing the subordinate officers to take necessary action in the matter.

The petitioner has enjoyment of the land admeasuring Acs.13.76 cts situated at Palukuru Village consisting of land admeasuring Acs.7.92 cts in survey No.176/1, Ac.1.78 cts in survey No.288/1,
Ac.1.06 cts in survey No.288/3 and Acs.3.00 in survey No.293. Fifth respondent claimed to have purchased land admeasuring 0.72 hectares in survey No.288/1 under a registered sale deed in 1984 and sixth respondent claimed to have purchased land admeasuring 0.917 hectares in survey No.293. Accepting their claims, the Mandal Revenue Officer (MRO) issued 'No Objection Certificate' (NOC) enabling respondents
5 and 6 to seek mining leases for quarrying black lime stone slabs. The petitioner alleges that the documents set up by respondents 5 and 6 are false and fabricated, and such sales are not authorised under the Wakf Act, 1995 (the Act, for brevity) and they are void. Questioning the grant of mining leases in favour of respondents 5 and 6 herein, mutawalli of the petitioner-institution and three others filed W.P.No.4813 of 2005, which was disposed of on 03.08.2005 by this Court observing that the alleged sale deeds do not come in the way of Wakf Board for taking necessary action for restoration of the property to the Wakf. A writ appeal, being W.A.No.1535 of 2005 was filed but the same was dismissed as withdrawn on 07.12.2005 giving liberty to the Wakf Board to take appropriate proceedings for nullification of the sale deeds and leases granted in favour of respondents 5 and 6. Fourth respondent then issued notice under Section 51 of the Act calling for explanations from respondents 5 and 6 and later passed orders under Section 52 of the Act declaring the alienation of the property as illegal and requested the District Collector, third respondent, to restore possession to the Inspector Auditor of the Wakf. Third respondent then addressed letter/proceedings dated 05.07.2006 to the Deputy Director to cancel the leases granted to respondents 5 and 6 and also by proceedings dated 17.08.2006 directed MRO to take possession of the land under Section 52 of the Act.

As a result thereof under the cover of Panchanama, possession

was taken on 31.08.2006 by the Inspector Auditor.

Respondents 5 and 6 filed W.P.No.15266 of 2006 questioning the proceedings of third respondent under Section 52 of the Act but the same wad dismissed as withdrawn on 25.09.2006. At that stage, mutawalli submitted an application to MRO on 12.10.2006 for NOC with a view to obtain lease in the name of the petitioner-institution. The same was granted. The Wakf Board also granter permission to undertake quarry operations by mutawalli on behalf of the institution. Assailing the same respondents 5 and 6 filed W.P.No.22238 of 2006. By order dated 27.10.2006, this Court dismissed said writ petition. Meanwhile the Deputy Director by two separate proceedings dated 27.07.2006 cancelled the leases granted in favour of respondents 5 and 6. Aggrieved by the same, they preferred appeals before first respondent, which was allowed by two impugned orders dated 02.11.2006.

The learned counsel for the petitioner-institution submits that when this Court validated the orders passed by the Wakf Board under Section 51 of the Act, there was no proper permission by the Wakf Board in favour of respondents 5 and 6 and therefore, cancellation of the leases in their favour was justified. Secondly it is his submission that first respondent passed orders as per the declarations/orders of this Court dated 03.08.3005 in W.P.No.4813 of 2005 and, therefore, the same are unsustainable.

Joint Director of Mines and Geology has filed a counter-affidavit on behalf of first respondent and a separate counter-affidavit is filed by fifth respondent. However, it is not necessary to refer to those in view of the admitted position that the orders passed by this Court on 27.10.2006 in W.P.No.22238 of 2006 were not brought to the notice of first respondent.

Heard learned counsel for the petitioner, learned Assistant Governm89ent Pleader for Mines and Geology, learned standing counsel for Andhra Pradesh State Wakf Board and learned counsel for respondents
5 and 6.

In W.P.No.22238 of 2006, this Court noticed that the leases granted by the Deputy Director in favour of respondents 5 and 6 were terminated. It is also clear that pursuant to the requisition sent by the Wakf Board, possession was taken and handed over to the Inspector Auditor and though the order of the Wakf Board was challenged in said writ petition, said writ petition was dismissed as withdrawn and as on today, the order of the Wakf Board also stands unchallenged. Therefore, by the time first respondent heard and reserved the matter on

07.10.2006, there was no proper permission or consent of the Wakf Board enabling grant of lease of the Wakf property for mining purposes. This position is not denied by all the counsel. Therefore, the impugned orders dated 02.11.2006 passed by first respondent in favour of respondents
5 and 6, separately, are set aside. This order shall not preclude the Wakf Tribunal to consider the grievance of respondents 5 and 6 afresh in the event of they approaching the Tribunal under Section 83 (1) of the Act.

The writ petition, with the above observations and directions, is accordingly disposed of. No costs.

(**V.V.S.RAO, J**)

08th February, 2007
ghn